Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Pacific Bell Telephone Company, and	)	WC Docket No. **02-306**
Southwestern Bell Communications Services,	)	
Inc. for Provision of In-Region, InterLATA	)	
Services in California	)	

REPLY AFFIDAVIT OF J. GARY SMITH

REGARDING THE STATUS OF LOCAL EXCHANGE COMPETITION

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I, J. *GARY* SMITH, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION

1. My name is J. *Gary* Smith. I am the same J. *Gary* Smith that previously filed an Affidavit Regarding the Status of Local Exchange Competition in this docket on September **20,2002,** in support of SBC's Application.' This affidavit replies to certain CLEC comments regarding the status of local exchange competition

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[1] See **App. A, Tab** 22.

TRACK A COMPLIANCE

2. It is first worth noting that the single most telling aspect of the comments filed regarding local competition is that no CLEC, either directly or indirectly, challenges the fact that Pacific has satisfied its Track A requirements – nor could they reasonably do so. My opening affidavit established beyond a doubt that the local market in Pacific's service territory is open to competition; that CLECs are serving business and residential subscribers entirely over their own facilities, over UNE/UNE-P facilities leased from Pacific, and/or through resale; and that competition is growing in all segments of the local market. I further note that, in the approximately two months since the filing of my opening affidavit, local competition has continued to advance at a rapid pace. For instance, as of September 2002, Pacific had provisioned approximately 361,000 UNE-P lines – an increase of approximately 139,000 from the approximately 222,000 provisioned as of July 2002.

MARKET SHARE DATA

3. It is equally worth noting that no CLEC has directly challenged the market share analysis set forth in my opening affidavit, which demonstrated that CLECs serve between 13% and 18% of the total access lines in Pacific's local service territory – including approximately 6% of residential lines. Indeed, no commenter challenged the lines attributed to individual CLECs in Attachment E to my opening affidavit. Instead, a few CLECs have claimed that CLECs as a whole possess a lower market share based on outdated and incomplete data. Although this Commission has rightly dismissed the notion that Track A compliance requires any particular showing of CLEC market share, I wish to briefly address the data on which the CLECs erroneously rely.

4. First, AT&T asserts that Pacific retains between 94 and 96.4 percent of local phone lines in its service temtory based upon a report released by the CPUC in June of 2002.[2] See Comments of AT&T Corp. at 82-83. Reliance on data from that report, however, is misplaced for **several** reasons, including:

- The use of old data. The CPUC report primarily used a combination of data from the FCC, dated December 2000,[3] and data collected by the CPUC as of June 2001.[4] At a minimum, the CPUC's conclusions were based on data over a year old, as compared to the July 2002 data provided in my opening affidavit.
- The use of incomplete data. The CPUC staff requested data from only 16 telecommunications carriers in California: whereas there are approximately 90 CLECs providing local service in Pacific's local service territory as of July 2002. Moreover, only one (1) of the 16 provided a complete response and only two (2) filed even a partial response by the due date. The CLECs that did not respond cited "inadequate record keeping and no legal requirement to maintain the data." CPUC staff expressly noted that "15 of the 16 carriers each had notable deficiencies in their data responses."[6]
- The failure to consider verifiable data. Although the CPUC staff noted that "[t]here is no one definitive source of data to quantify the status of competition in California,"[7] all

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2 See California Public Utilities Commission, ***The Status of Telecommunications Competition in California*** (CPUC June 5,2002) (Attachment 7 to the Comments of AT&T Corp.).

3 Id. at Chapter 3, §II.B.i.

4 Id. at Chapter 2, §V.

5 Id.

6 Id.

7 Id.

indications are that they used little, if any, of Pacific's actual and verifiable E911 or billing data – the data on which I rely in my opening affidavit.

5. Second, both Vycera and PacWest cite data from this Commission's February 2002 *Local* ***Telephone Competition Report*** in support of their assertion that CLECs serve only approximately ***7.6%*** of the local market in Pacific's local service territory. See Comments of Vycera Communications, Inc., at 26-27; Comments of PacWest Telecomm, Inc., RCN Telecom Services, Inc., and U.S. Telepacific Corp., at **14.** Again, however, reliance upon data from that report is misplaced for several reasons, including:

- The use of outdated data. The FCC report reflects data from June 2001.[8] Conversely, my opening affidavit contained the then most currently available data – from July 2002.

- The use of incomplete data. The FCC only requested data from "qualifying carriers" – those with over 10,000 local telephone lines.[9] This process would ignore the local access line counts of over 50 CLECs providing service in Pacific's local service territory. Moreover, the Commission directed CLECs to report "all local exchange service lines and all lines that are used for exchange access services."[10] It seems clear, however, that confusion or intentional disregard of the FCC's instructions with regard to "lines" versus "voice-grade-equivalent circuits" may have caused a substantial under-reporting problem. Moreover, some CLECs expressed concern that complying with the FCC's instructions

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8 **Ind.** Anal. **Div.,** FCC, ***Local Telephone Competition: Status*** *as of June* ***30,2001*** (Feb. ***2002).***

9 Id. at 1, n.1.

10 **FCC,** ***Instructions for the Local Competition and Broadband Reporting Form, FCC Form 477*** **at** *5* **(data as of** Dec. 31,2001).

would lead to the release of competitively sensitive information." Accordingly, as the Commission itself has noted, "the reports of at least some CLECs are not consistent" with its directions, and, as a result, "there may be some need for further clarification and adjustment of the reporting system.""

The failure to consider verifiable data. **As** noted in the UNE Fact Report filed in connection with the comments of SBC, Verizon, BellSouth, and Qwest in the Triennial Review proceeding, CLECs reported to the FCC only ***8.6*** million nation-wide facilities-based lines as of year-end 2001. Yet CLECs had listed 16 million lines in E911 databases – or almost twice as many lines. This discrepancy cannot be attributed to any factor other than gross under-reporting by the CLECs to this Commission.[13] Similarly, CLECs had obtained approximately 9 million interconnection trunks from ILECs nation-wide as of year-end 2001 while claiming to serve only *8.6* million lines.[14] It is patently unreasonable to believe that CLECs have obtained roughly one trunk for every access line they serve – indeed, it is far more reasonable to assume a trunk-to-access line ratio closer to 2.75:1, as demonstrated in my opening affidavit.

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[11] See, e.g., Comments of AT&T Corp. at 17, ***Local Competition and Broadband Reporting***, CC Docket No. 99-301 (FCC filed Dec. 3, 1999) ("There is little information that is guarded more closely by a newly-developing competitor. . . than its subscriber or access line counts."); Comments of Time Warner Telecom at 6-7, ***Local Competition and Broadband Reporting,*** CC Docket No. 99-301 (FCC filed Mar. 19, 2001) ("Much of the data the Commission requests on Form 477 is widely considered proprietary and competitively-sensitive. . . . [f]or example, TWTC routinely seeks confidential treatment of its data on total voice telephone service lines and channels provided to end users.").

[12] Ind. Anal. Div., FCC, ***Local Telephone Competition: Status as of June 30, 2001*** at **1-2,** n.3.

[13] UNE Fact Report 2002, Appendix **A,** ***attached to*** Comments of SBC Communications Inc., et al., CC Docket Nos. 01-338, 96-98 & 98-147 (FCC filed Apr. **5,2002).**

[14] Id.

CONCLUSION

6. The fact that CLECs challenge neither the specific line counts in my opening affidavit nor Pacific's compliance with Track **A** speaks volumes. Although certain CLECs have summarily cited outdated and incomplete data to conclude that CLECs possess a lower percentage of the market than demonstrated by the unchallenged data set forth in my opening affidavit, even the CLEC data would not change the unavoidable conclusion that the local market in Pacific's local service territory is open to competition and that competition is thriving. **As** I previously concluded, there is accordingly no conceivable basis to deny that Pacific has met its obligations under Section 271(c)(1)(A).

7. This concludes my affidavit.

STATE OF TEXAS)
)
COUNTY OF DALLAS)

I declare under penalty of perjury that the foregoing is true and correct.

J. Gary Smith

J. Gary Smith

Subscribed and sworn to before me this 23 **day** of Oct, **2002**

Jason Dorman

Notary Public

JASON DORMAN
MY COMMISSION EXPIRES
February 20, 2006

Before the
FEDERAL COMMUNICATIONS COMMISSION
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Services in California	)	

REPLY AFFIDAVIT OF LINDA S. VANDELOOP

REGARDING PRICING ISSUES

Schedule of Attachments

Attachment A Accessible Letter regarding Interim DS3 UNE Loop Recumng Rate Offering

I, LINDA S. VANDELOOP, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION AND PROFESSIONAL EXPERIENCE

1. My name is Linda S. Vandeloop. My business address is 140 New Montgomery Street, San Francisco, California 94105. I am employed by Pacific Bell Telephone Company ("Pacific") and my title is Executive Director-Regulatory and Constituency Relations. I am the same Linda Vandeloop who filed an Affidavit on September 20,2002. (App. A, Tab **23).**

PURPOSE OF AFFIDAVIT

2. The purpose of this affidavit is: (1) to address AT&T Communications of California, Inc.'s (AT&T's) allegation that Pacific's prices are not TELRIC-compliant; **(2)** to address AT&T's complaint about the true-up mechanism; **(3)** to address XO California, Inc.'s (XO's) complaint about DS-I and DS-3 loop prices; **(4)** to address Pac-West Telecomm, Inc./RCN Telecom Services, Inc./U.S. Telepacific Corp.'s complaint about potential non-TELRIC based prices; and (5) to clarify the pricing proposals set out in Pacific's Application.

CONTRARY TO AT&T'S ALLEGATIONS, PACIFIC'S PRICES ARE COST BASED

THE CPUC HAS ESTABLISHED UNE PRICES THAT *ARE* TELRIC COMPLIANT

3. AT&T claims that the California Public Utilities Commission (CPUC) made no finding that "the UNE rates currently in force in California are TELRIC-compliant rates."[1] That is untrue. In its Final Decision on Pacific's 271 proceeding, the CPUC stated: "We have

[1] Comments of AT&T Corp. at 13, ***Application of SBC Communications Inc., Pacific Bell Telephone Company and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,*** WC Docket No. 02-306 (FCC filed Oct. 9,2002) ("AT&T Comments").

and shall continue to adopt cost-based, TELRIC compliant UNE rates in California, We have made interim adjustments where we have found the most significant disparities, and will move steadfastly to adopt permanent rates. Overall, we submit to the FCC our evaluation and conclusion that Pacific's UNE rates conform to its requirements."'

4. **As** stated in my affidavit, the CPUC approved UNE prices for Pacific in 1999, after an exhaustive review process. The rates adopted in California are the culmination of a long, inclusive, and rigorous multi-phase process directed by the CPUC. While the Commission accepted some of Pacific's pricing proposals, the CPUC made numerous modifications at the urging of CLECs and Staff, and ultimately approved Pacific's UNE prices, concluding that these prices were properly based on the modified TELRIC studies.[3] Specifically, the CPUC found that the proposed recurring and non-recurring charges "satisfy the requirements of Sections 251(c)(2), 251(c)(3), and 252(d)(1) of the Telecommunications Act of 1996."[4]

5. Although AT&T is correct that Pacific's interim rates were not themselves "based on any rigorous application of TELIUC," those rates were set by taking uniform reductions off rates that were originally set in accordance with TELRIC principles.' In addition, other than providing minor "examples" of how the rates in California are not TELRIC-compliant, AT&T has neither (nor has any other party) presented the FCC with ***any***

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2 **Decision Granting Pacific Bell Telephone Company's Renewed Motion for** *an* **Order That** *It* **Has Substantially Satisfied the Requirements of the 14-Point Checklist in § 271 of the Telecommunications Act of 1996 and Denying That** It **Has Satisfied § 709.2** of **the Public Utilities Code at 124,** ***Rulemaking*** *on* ***the Commission's*** *Own Morion* ***to Govern Open Access,*** **D.02-09-050, (Cal. PUC Sept. 19,2002)**

3 **Interim Decision Setting** Final **Prices For Network Elements Offered by Pac Bell,** ***Rulemaking on the***

4 ***Commission's*** *Own* ***Motion to Govern Open Access,*** **D. 99-11-050 (Cal PUC Nov. 18, 1999) (App. C, Tab 60). Id. at** 60, **Ordering ¶ 2.**

5 **Affidavit** of **Richard** L. Scholl ¶¶ 33-80, ***Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,*** **WC Docket** No. 02-306 (FCC **filed Sept. 20,2002) (App. A, Tab 19) ("Scholl Affidavit").**

specific evidence that basic TELRIC principles have been violated, nor with any evidence that the CPUC made clear errors in factual findings on matters that are so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.[6]

VERTICAL FEATURE CHARGES ARE PERMISSIBLE AND ARE TELRIC BASED

6. AT&T claims that "Pacific's switch rates are inflated because it charges competitive LECs a separate fee for ***each*** *vertical feature* (e.g., 'caller ID,' 'three way calling' and 'call forwarding')."' **As** explained in Mr. Scholl's affidavit, the CPUC approved Pacific's switch-based vertical feature costs in OANAD.[8] In his reply affidavit, Mr. Scholl fully addresses AT&T's specific concerns and shows why those allegations are unpersuasive.[9] Again, Pacific believes that the feature charges are cost based and that the approved rate structure is consistent with the FCC's recognition that it is not unreasonable **for** state commissions to permit ILECs to recover costs in such a manner." In any case, the question of the propriety of separate charges for features is at issue in the pending 2001-2002 Consolidated UNE Reexamination proceeding. Therefore, the FCC can have confidence that because of its demonstrated commitment to TELRIC principles, the CPUC will make appropriate adjustments, **if** necessary, in that proceeding.

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6 See, e.g., Memorandum Opinion and Order ¶ 244, *Application by Bell Atlantic New Yorkfor Authorization Under Section 271 of the Communications Act To Provide In-Repon, InterLA TA Service in the State of New York,* 15 FCC Rcd 3953 (1999) (**"New** York 271 Order"); Memorandum Opinion and Order ¶¶ **20, 37,** *Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 (2001) ("Massachusetts 271 Order"); Memorandum Opinion and Order ¶¶ 27, 45, *Applicaiion by Verizon New England Inc., et al., for Authorizaiion To Provide In-Region, InterLATA Services in Rhode Island,* 17 FCC Rcd 3300 (2002).

7 AT&T comments at 27.

8 **See Scholl** Affidavit ¶¶ 29, 35.

9 See Scholl Reply Affidavit ¶¶ 19-23 (Reply App, **Tab** 13).

10 Memorandum Opinion and Order ¶ 84, *Joint Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana,* 17 FCC Rcd. 9018 (2002); Memorandum Opinion and Order ¶¶ 39-41, *Application of Verizon New Jersey, et al., for Auihorizaiion to Provide In-Region, InterLATA Services in New Jersey, 17* FCC Rcd 12275 (2002) (*"New Jersey 271 Order").*

NON-RECURRING RATES **AND SIGNALING AND** TRANSPORT **RATES ARE NOT** OVERSTATED

7. AT&T generally claims that non-recurring rates are overstated and specifically asserts that the non-recurring rates impermissibly contain recurring costs.[11] However, the non-recurring rates were established in the OANAD proceeding, only after thorough review by the CPUC.[12] Moreover, AT&T recently argued that non-recurring costs should *not* be included as part of **the** Commission's review **of** UNE costing and **pricing.**[13] **If** these prices were truly overstated, it is unlikely that AT&T would forgo the opportunity to submit new cost studies. AT&T's specific challenges to Pacific's non-recurring rates **are** further addressed in the reply affidavit ***of*** Mr. Scholl (Reply App., Tab .

8. AT&T also alleges that Pacific's signaling and transport prices are too **high.**[14] Yet AT&T offers no evidence to support that general contention, nor any basis for comparison. More importantly, AT&T's claim is simply not **true.** The Commission in OANAD set signaling (i.e., STP port and SS7 link (voice-grade and DS-1 levels)) and transport rates, after careful examination **of** voluminous submissions by all interested parties." Additionally, the costs of signaling associated with call set-up are recovered through the prices for unbundled local switching (per call set-up), which in May **2002**

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11 AT&T Comments at 14; Murray Declaration. ¶¶ 6-7 (attached thereto).

12 Opinion, Rulemakinc on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Camer Networks, Rulemaking 93-04-003; D. 98-12-079 (Cal PUC Dec. 17, 1998) (App. C, Tab **45);** See also Scholl Affidavit¶¶ 81-100.

13 Transcript of Prehearing Conference at 210-11, Joint ***Application of AT&T Communicationsof California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050, Application 01-02-024, et al.,*** ("Joint Application of AT&T and WorldCom") (June 3, 2002) ("MR. MILLER [AT&T's counsel]: Your Honor, if I could clarify, I think, a misunderstanding of what we were requesting when we talked about a general reexamination. We did not intend to include ***nonrecurring costs*** or Verizon in that request." (emphasis added)).

14 AT&T Comments at **12.**

15 Interim Decision Setting Final Prices for Network Elements Offered by Pacific Bell, Appendix. A at 3, 4, ***Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services,*** Rulemaking 93-04-003; D. 99-11-050, (Cal PUC Nov. 18, 1999) (App. C, Tab 60); See also Scholl Affidavit, Att. B.

were reduced nearly 70 percent. Moreover, AT&T and WorldCom nominated transport and signaling UNEs for the 2002 UNE Reexamination Proceeding, but the Commission, recognizing that AT&T and WorldCom had failed to justify such a comprehensive review, chose to address only SS7 links and Unbundled Dedicated Interoffice Transport.[16] It is apparent that the CPUC considered AT&T's claim and declined to review all signaling and transport costs. Likewise, these unsupported claims merit no further review by the FCC.

DEDICATED TRANSPORT AND CNAM

9. RCN alleges that, "...some ILECs refuse to sell CLECs cost-based transport, i.e., UNE dedicated transport, for interconnection trunks."" RCN suggests that, "...*Verizon* in several states, refuses to provide RCN cost-based interconnection facilities and forces RCN to order such facilities from *Verizon's* interstate special access tariff."(emphasis added)" Obviously, *Verizon's* practices ***are*** irrelevant **with** respect to Pacific's application. However, simply to ensure the record is clear, Pacific ***does*** allow CLECs to order cost-based transport, including dedicated transport, for interconnection trunks.[19]

10. RCN additionally complains that Pacific's CNAM query rate is too high, and it argues that a better price is the one charged by Verizon in New York.[20] RCN suggests that the

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16 Scoping Memo For Consolidated 2001/2002 Unbundled Network Element (UNE) Reexamination For Pacific Bell Telephone Company, *Joint Application of AT&T and Worldcom* (Cal PUC June 12, 2002) (App. A, Tab 52).

17 Comments of Pacific Telecomm. Inc., RCN Telecom Services, Inc., and U.S. Telepacific Corp. at 35, *Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,* WC Docket No. 02-306 (FCC filed Oct. 9, 2002) ("RCN Comments")

18 Id.

19 See Affidavit of Linda Vandeloop, Att. A, *Application of SBC Communications Inc., Pacific Bell Telephone Company, Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,* WC Docket No. 02-306 (FCC filed Sept. 20, 2002) (App. A, Tab 23) (Vandeloop Affidavit)

20 RCN Comments at 36.

FCC should "benchmark" Pacific's CNAM rate to Verizon's New York CNAM rate in order to determine whether Pacific's rate is appropriate.[21] First, the fact that one state charges a different rate for a particular element than another state does not prove that ***either*** rate violates TELRIC principles.[22] The CPUC approved Pacific's TELRIC-compliant rate for CNAM queries in the Pacific-AT&T Communications of California, Inc. Interconnection Arbitration proceeding.[23] In addition, the FCC's benchmarking analysis is a tool utilized by the FCC to ensure that a state's rates are TELRIC-compliant by comparing rates ***and*** *costs* between the states. RCN compares rates, while failing to compare costs. Clearly, it is inappropriate for the FCC to "benchmark" Pacific's CNAM query rate. Finally, this is the first time that the appropriateness of the CNAM query price has been raised. The FCC should reject this claim out-of-hand.

AT&T'S CRITICISM OF INTERIM RATES IS UNFOUNDED

11. AT&T complains that the number of prices that are interim introduces too much risk **for** CLECs.[24] However, AT&T (and WorldCom) initially proposed in the 2001 UNE Reexamination Proceeding that the CPUC set interim UNE prices.[25] In any event, Pacific has taken the unprecedented, voluntary step to minimize the impact of interim rates on CLECs by limiting the UNE-P true-up to the cost-adjusted Texas rates, which the FCC has already recognized are TELRIC-compliant. Specifically, Pacific voluntarily agreed

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21 Id.

22 See, e.g., New York 271 Order ¶ 244; Memorandum Opinion and Order ¶ 64, ***Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma,*** 16 FCC Rcd 6237 (2000); New Jersey 271 Order ¶ 17.

23 Opinion, ***Application by AT&T Communications of California, Inc., et al, (U 5002 C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U 1001 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996,*** Application 00-01-022, D.00-08-011 (Cal PUC Aug. 3, 2000) (approving Final Arbitrator's Report) (App. C, Tab 64); Interconnection Agreement between Pacific Bell Telephone Company and AT&T Communications of California, Inc. (effective Aug. 14, 2000), Att. 8 (Pricing) (App. **B,** Tab 3).

24 AT&T Comments at 29-30.

25 Motion of Joint Applicants for Interim Relief, ***Joint Application of AT&T and WorldCom,*** (Aug. 20, 2001).

to seek a true-up to no more than 11 percent below the effective rates in Texas for the period of time in which the interim rates were in place.[26] Furthermore, the interim rates will be in place for a limited period of time, are subject to true-up, and the CPUC has indicated its commitment to setting permanent rates in an expedited fashion." Accordingly, AT&T's concerns are misplaced.

DS-I *AND* DS-3 PRICES ARE TELRIC COMPLIANT

12. XO asserts that Pacific's DS-1 and DS-3 loop rates are not TELRIC-compliant, that the DS-3 loop rate element was not specifically "examined in the prior OANAD proceeding using a forward-looking, TELRIC analysis," and that Pacific's offer *to* treat these rates as interim is insufficient.[28] As XO recognizes in its comments, Pacific has taken affirmative action to address XO's concerns "before XO or any other CLEC has filed *even one word*" in this proceeding.[29] In order to address XO's concerns regarding the prices of DS-1 and DS-3 loops, Pacific has voluntarily committed to treat DS-1 and DS-3 loop rates as interim subject to true up.[30] In contrast to XO's arbitrary proposal (discussed below), converting the rates in question to interim rates addresses XO's contentions and ensures

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26 The Department of Justice expresses concern that Pacific's proposed true-up may he ambiguous. Evaluation of the United States Department of Justice ("DOJ Comments") at 7-9, ***Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,*** WC Docket No. 02-306 (Oct. 29,2002). I respond to this concern below.

27 D.02-09-050 at 120. ("We are mindful of the importance of adopting permanent rates for the entire spectrum of UNEs; and we are setting forth to accomplish this as expeditiously as possible."); Memorandum Opinion and Order ¶ 90, ***Application*** by ***SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas,*** 15 FCC Rcd 18354 (2000) ***("Texas 271 Order").***

28 Comments of XO California Inc. at 6-15, ***Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,*** WC Docket No. 02-306 (FCC filed Oct. 9,2002) ("XO Comments"). (Pacific responds to XO's allegations that DS-1 and DS-3 UNE loops are not TELRIC-compliant in the reply affidavit of Mr. Scholl.)

29 **XO** Comments at 7 (emphasis in original).

30 SBC Pacific Bell Accessible Letter CLECC02-267 (Sept. 13,2002) (App. G, Tab 57).

that the rates remain cost-based. Therefore, XO's dismissal of Pacific's commitment as prejudicial is not supported by the facts.

13. XO's additional suggestion that Pacific's **DS-1** and **DS-3** loop rates should be lowered to the level of the Texas rates is arbitrary. First, as explained in the reply affidavit of Mr. Makarewicz (Reply App., Tab **12),** the FCC has not benchmarked high-capacity loop rates in prior **271** orders, as the high cost model does not account for cost disparities between the states for high-capacity loop types." Second, XO gives no cost justification to its proposal, but instead merely asserts that the Texas rates are a reasonable substitution when compared to other states' rates.[32] Third, it is inappropriate for XO to "cherry pick" discrete rates from one state and substitute them with the applicant states' rates.[33] For these reasons, it is clear that XO's suggestion is inappropriate.

CLARIFICATION OF PRICING PROPOSALS

UNE-P

14. In my opening affidavit, I described Pacific's proposal to seek a true-up to no higher than the benchmark level that results from utilizing the FCC's benchmark analysis. In its comments supporting Pacific's application, the DOJ raises only one pricing issue, specifically, possible ambiguity with respect to Pacific's UNE-P true-up.[34] The DOJ offers that, "it is not clear which Texas rates will be reflected in SBC's true-up calculations if the Texas PUC revises its rates pursuant to its pending cost proceeding during the period interim rates are in effect in California."[35] First, Pacific's commitment,

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32 Makarewicz Reply Aff. ¶ 26 (Reply **App., Tab** 12).

33 XO comments at 10, 15.
See Massachusetts 271 Order ¶ 28 (FCC disagreeing with AT&T's assertion that **the appropriate comparison** for switching **rates** should be Texas, Kansas, or Oklahoma, rather than New **York.)**

34 DOJ comments at 7-9.

35 Id. at 8 (footnote omitted).

as outlined in my affidavit, is to true-up to rates no more than 11 percent below ***current*** Texas rates.[36] Pacific calculated the rate ceiling for purposes of true-up ($18.52) by reducing the current rate for UNE-P in Texas ($20.82) by 11 percent." Thus, Pacific believes that its commitment is clear.

15. However, the DOJ's concern reflects a hypothetical situation that may occur only if Texas sets new rates during the period interim rates are in effect in California. Indeed, there always is some uncertainty when interim rates are utilized. However, interim rates are appropriate when they comply with certain principles enunciated by the FCC – which Pacific's rates do.[38] In this case, it is uncertain whether the new Texas rates will be set higher or lower than current rates **and** whether those rates will be set before the CPUC sets its permanent rates. It is likewise unclear whether the CPUC will set higher or lower rates in its own reexamination proceeding. However, rather than inject ambiguity into the process, Pacific's commitment does the unprecedented; it eliminates uncertainty for CLECs. Even though rates are currently interim subject to true-up, a CLEC entering the market in California is assured its UNE-P rate will not exceed $18.52 during the interim period before permanent rates are established. This is true no matter what rate revisions are made by the Texas PUC or the CPUC.[39] That said, should the DOJ's hypothetical situation come to pass (the Texas PUC sets new rates during the interim period), Pacific

36 Vandeloop Affidavit ¶ 50, fn. **67** ("Pacific would only seek to "true up" the difference between the interim statewide average rate ($14.39) and $18.52, which reflects a statewide average rate that is 11 percent below the established Texas rate of **$20.82** (using the same assumptions listed in Attachment **B** to the Makarewicz affidavit).)."

37 See Affidavit of Thomas Makarewicz ¶ 13, Table **2**, ***Application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in California,*** WC Docket No. **02-306** (FCC filed Sept **20,2002)** (App. A, Tab 14). (The non-loop comparison included an average of **3** features per line. Pacific's hue-up proposal **is** thus based on an average number of features – one that favors **CLECs,** since it assumes that customers take more features than internal data reflects.)

38 Texas **271** Order ¶ 90.

39 Of course, the rate ceiling will only be reached if the **CPUC** establishes permanent rates that are substantially higher than the interim **rates** currently in effect.

and other interested parties will address the effect of that situation at that time before the CPUC.

DS-1 AND DS-3 LOOPS

16. XO complains that making DS-1 and DS-3 prices interim is not sufficient to "cure the substantial economic hardship that XO and other CLECs have suffered, and continue to suffer, since these prices went into effect."[40] XO believes that it and other CLECs, "...will continue to experience an inability to compete... as well as a severe cash drain while waiting for the California rate review...."[41] Pacific does not agree with XO's assertions that the current DS-1 and DS-3 loop rates cause substantial hardship for CLECs. In fact, Pacific continues to believe that its current DS-1 and DS-3 loop rates are TELRIC-compliant. Furthermore, Pacific's commitment to true-up DS-I loop and DS-3 loop rates to the permanent rates established by the CPUC addresses XO's concerns. However, based on newly submitted cost studies, Pacific has committed to offer DS-3 loop rates at the level Pacific has recently proposed in the CPUC's 2001-2002 Consolidated UNE Reexamination Proceeding.[42] Pursuant to the CPUC's procedural schedule, Pacific submitted cost studies in the reexamination proceeding on October 18, 2002. In that filing, Pacific submitted a proposed DS-3 loop rate in California of $573.20.[43] Recognizing that this proposal is likely the rate ceiling for the CPUC's ultimate determination, Pacific has committed to offer to CLECs its proposed DS-3 loop rate (i.e. $573.20), on an interim basis subject to true-up, until the CPUC establishes

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40 XO Comments at 11-12

41 Id. at 12.

42 SBC Pacific Bell Accessible Letter CLECC02-302 (Nov. 1, 2002) (attached hereto as Attachment A).

43 Comments of Pacific Bell Telephone Company, Declaration of Michael D. Silver, Attachment MDS-2, *Joint Application of AT&T and WorldCom*, (U 1001 C), (Oct. 18,2002).

permanent rates in its reexamination proceeding (or until such time as Pacific is no longer required to make the DS-3 loop available as an unbundled network element).[44]

CONCLUSION

17. **As** I concluded in my opening affidavit, the record in California clearly demonstrates that the CPUC, after a comprehensive and inclusive evaluation, has set UNE and interconnection prices that are consistent with FCC TELRIC principles and rules and are reasonable by any measure. The CPUC has ruled that Pacific's prices are based upon studies that the CPUC has repeatedly evaluated and approved **as** TELRIC-compliant. No party has presented any evidence of clear TELRIC errors, only minor "examples," which Pacific has clearly rebutted. Criticisms of Pacific's TELRIC prices are, therefore, unfounded.

18. In addition, any complaint regarding Pacific's true-up proposal is unsupported. **As** I have shown, Pacific has created certainty to the true-up process – a benefit to CLECs. I have also clarified Pacific's pricing proposals, leaving no doubt that Pacific's proposals are reasonable. Finally, Pacific's additional offer to reduce **its** interim DS-3 loop rates to its new proposed rates, fully addresses any outstanding concerns.

19. Pursuant to Part II. E. of the Consent Decree entered into between SBC Communications Inc. and the Federal Communications Commission (see Order, In the Matter of SBC Communications, Inc., 17 FCC Rcd 10780 (2002), I hereby affirm that I have (1) received the training SBC is obligated to provide to all SBC FCC Representatives; (2)

[44] Pursuant to Pacific's cost study tiling in the reexamination proceeding, Pacific has proposed a **DS-1** loop rate that is higher than the current interim **DS-I** loop rate. Therefore, the potential exists that the CPUC may set **DS-1** prices higher than those currently in place. Thus, because the current interim DS-1 loop rate is lower than the proposed **DS-I** loop rate, Pacific does not believe that further adjustments are appropriate. In addition, the current **DS-I** loop rate **in** California *is* no barrier to entry – Pacific has provided approximately 19,000 **DS-1** UNEs to CLECs (as compared to only **42 DS-3).**

reviewed and understand the SBC Compliance Guidelines; **(3)** signed an acknowledgment of my training and review and understanding of the Guidelines; and **(4)** complied with the requirements of the SBC Compliance Guidelines.

20. This concludes my affidavit.

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

I declare under penalty of perjury that the foregoing is true and correct

Executedon Oct. 31 ,2002.

Linda S Vandeloop

Linda **S.** Vandeloop

Subscribed and sworn to before me this 31st day of Oct. ,2002.

Notary Public

AMY LEE SIU
Comm. # 1293670
NOTARY PUBLIC - CALIFORNIA
City & County of San Francisco
My Comm. Expires Feb. 9, 2005